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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933.

No. 106

W. D. SANDERS, PETITIONER,

vs.

ARMOUR FERTILIZER WORKS AND NATIONAL FIRE INSURANCE COMPANY.

REPLY OF W. D. SANDERS TO ATTACK OF ARMOUR FERTILIZER WORKS UPON JURISDICTION OF DISTRICT COURT IN THIS CASE.

We have just been furnished with copy of an additional argument of Armour Fertilizer Works in this case, titled: "Suggestions Concerning Question of the Jurisdiction of the District Court Below." As this is the first time that this question has been raised before this Honorable Court, we feel justified in replying briefly thereto.

As we interpret this argument, it is not based on the proposition that the District Court had no inherent jurisdiction to try an interpleader case, which question possibly could be raised at any time, but upon the contention that as a matter of fact the claims of Armour and Sanders are not adverse, and therefore the bill of interpleader should never have been allowed. We do not see how there

can be any question that the contention in this form is wholly without merit. Armour made the same contention in the first trial of this cause, which contention was sustained by the District Court, but on appeal the judgment of the District Court was reversed and the cause remanded, with instructions that the bill of interpleader be allowed. The Circuit Court on this appeal said (38 Fed. (2) at 214): "We think that the facts in this case show that the District Court is mistaken in concluding that the claims of Armour and Sanders are not adverse." No further appeal was taken from this judgment of the Circuit Court, and surely it must be conclusive of the question of fact therein adjudicated.

Not only is this true, but also, as was pointed out by the insurance companies in their brief in the Circuit Court of Appeals on this appeal, when the cause was remanded the District Court then entered an order of September 14, 1931, sustaining the bill of interpleader (Tr. 74). No writ of error or appeal was taken from that order by Armour within three months of that date, and it seems to us that Title 28, Section 230, U. S. C. A., providing: "No writ of error or appeal intended to bring any judgment or decree before a Circuit Court of Appeals for review shall be allowed unless application therefor be duly made within three months after the entry of such judgment or decree," is conclusive of this point.

The brief of the insurance companies filed in the Circuit Court of Appeals points out in detail the fact that Armour's attempted appeal from the order of the District Court allowing the bill of interpleader has not been legally perfected, and also covers a little more fully than is done here the point that the right of the insurance companies to the bill of interpleader is *res adjudicata*.

As a matter of logic, we have never been able to see any merit to the contention that Armour and Sanders are not

adverse in their respective claims against the insurance companies. As is pointed out by the Circuit Court of Appeals, each is claiming the proceeds of the policies to the exclusion of the other.

The fact that Armour Fertilizer Works is claiming that it has the right to collect Sanders' claim against the insurance companies, whereas Sanders denies that Armour has any such right, does not to our mind make their claims harmonious. That is the essence of their disagreement. So far as the insurance companies were concerned, they were faced with the possibility of two distinct lawsuits in different jurisdictions, which certainly meant double vexation and possibly double liability. Even if the question were not concluded as a matter of law, we can see no question but that the insurance companies were entitled to their bill of interpleader in this case.

Incidentally, we are interested in the statement made by Armour on page 3 of their second brief that they do not contend that the money on deposit with the District Court below belongs to Armour, but simply that Armour has a lien upon it which it is asking the Texas court to enforce. It seems to us that this lends force to our argument under our second assignment of error that the holder of a foreign judgment is not entitled to the remedies allowed him by the law of that state on such judgment, but is only entitled to the remedies allowed him by the law of the forum. In this connection, we again call the court's attention to the quotation from *Cole* v. *Cunningham*, 133 U. S. 107, 33 L. Ed. 538, set out on page 37 of our original brief, reading in part as follows:

> "No execution can be issued upon such judgments without a new suit in the tribunals of other states, and they enjoy, not the right of priority or privilege or lien which they have in the state where they are pronounced, but that only which the *lex fori* gives to them

> by its own laws, in their character of foreign judgments. And other judicial proceedings can rest on no higher ground."

Since Armour has now made it clear that it is asking the Texas court to grant it a remedy, *i. e.*, enforcement of an alleged lien upon property which, under the Texas law, is exempt from such remedy, we submit there can be no question but that such remedy should be denied by the Texas court, and Sanders' right to have the fund in question exempt to him against Armour's alleged claim should prevail, whether the default order entered against Sanders in Illinois be regarded as a final judgment, as contended for by Armour, or as merely an interlocutory order, as it was found to be by the Circuit Court of Appeals.

We do not understand that Sanders is in any delinquency before this Honorable Court by reason of the provisions of Rule 27. Rule 27 in its logical sequence follows the prior rules dealing with an appeal. Rule 38, providing for a review on writ of certiorari, comes after Rule 27, and it requires that a brief be filed by petitioner, accompanying his petition for a writ. We find no requirement for any other brief to be filed by petitioner, and as we had undertaken to cover the affirmative of our position in that brief, and especially since we have been allowed this appeal *in forma pauperis* and are unable to have any additional arguments printed, we have endeavored to confine any further argument before this Honorable Court to as brief a statement as possible.

Since we are submitting the case on brief, however, and without oral argument, we do wish to reply to two or three points raised in Armour's original brief which we did not cover in our reply filed prior to the granting of the writ.

Armour has attempted to distinguish several of the Illinois cases, such as *Lancashire Insurance Co.* v. *Corbetts*,

165 Ill. 592; *Becker* v. *Ill. Central Ry. Co.*, 250 Ill. 40; *Bigelow* v. *Andress*, 31 Ill. 322, and *McElwee* v. *Wilce*, 80 Ill. App. 338, by commenting upon the parties who were before the court, and by implying that the unqualified language used by the courts, in holding that the mere pendency of a garnishment suit, prior to the rendition of a final judgment therein against the garnishee, is entitled to no faith and credit in the courts of another state, and in holding that the service of a garnishment writ creates no lien upon any moneys or property in the hands of the garnishee, should be interpreted by this Honorable Court as though containing the qualification, "as between plaintiff and garnishee." We submit that the Illinois courts knew the effect of their language, and had they intended to qualify their statements they would have done so. We believe that the cases cited fully sustain the proposition for which they were cited by Sanders.

We would also point out, although it may seem superfluous, that the right of Sanders to have the insurance money exempt to him did not require that he file suit in order to perfect it: his right of exemption arose simultaneously with the debt, and antedated any right of any character in and to the fund in controversy subsequently claimed by Armour. The situation is not comparable in any way to a case of two garnishments in which the prior in point of time is entitled to priority in payment, and the fact that the interpleader statute fixed the venue of the interpleader suit at the residence of the assured, and thereby incidentally secured to him the benefit of the exemptions allowed him by the state of his domicile, furnishes no just ground of complaint to Armour.

This is all the more true because, as we have pointed out in our original brief, it is apparent from the facts of this case that the suit was filed by Armour in Illinois, rather than in Texas, the State where the notes sued on were

given and by their terms were payable, for the express purpose of evading the Texas exemption laws. We respectfully differ with Armour's statement on page 22 of their brief that there are no circumstances in the record from which may be inferred even a suspicion that Armour was attempting to evade the Texas exemption laws. The notes sued upon by Armour (Tr. 89) show that they were made payable to the order of Planters Fertilizer & Chemical Company, New Orleans, La. (owned and operated by Armour Fertilizer Works). The notes were also payable in Tarrant County, Texas. The notes do not show to have been endorsed by Planters Fertilizer & Chemical Company to Armour Fertilizer Works, nor is the exact character of that company made clear. The suit was filed (Tr. p. 89) in the name of Armour Fertilizer Works, a corporation, trading as Planters Fertilizer & Chemical Company. There is something suspicious in this entire set-up. Obviously Planters Fertilizer & Chemical Company was set up as some character of an organization with a principal office in New Orleans, and with some character of an office in Fort Worth, Tarrant County, or that city would not have been designated as the place of payment in the notes. It seems to us that the notes were not endorsed by the Planters Company to Armour because that would have been too open an admission that the transfer was made for the purpose of evading Texas laws. The attorneys preferred to assume that Armour Fertilizer Works was the payee of the notes and filed suit on that assumption in Chicago. It does not seem to us to be an accident that notes which were taken by the Southern subsidiary of Armour, with a city in Texas designated as the place of payment, should have been sent up to Illinois for suit and garnishment on homestead insurance money which would have been clearly exempt in Texas. Armour knew that the insurance companies upon whom the garnishment was run were doing business

in Texas and were available for garnishment there, because the property covered by the policies was situated in Texas. We submit that the record in this case shows as clearly as circumstantial evidence can ever show, that the notes in question were sent up to Illinois for suit there for the express purpose of evading the Texas exemption laws, and we submit further that it was the duty of the United States District Court, sitting in Texas, as a Texas court, to protect a Texas citizen against this attempted evasion of the laws of his domicile.

For the reasons stated, we respectfully request that this Honorable Court reverse the judgment of the Circuit Court of Appeals and affirm the judgment of the United States District Court in this case.

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